

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS

IAN J. BROWN, JAMES BROWN and)	
BARBARA BROWN,)	
Plaintiffs)	
)	
v.)	
)	
UNITED STATES OF AMERICA,)	NO. 04-11924-RGS
VERIZON NEW ENGLAND, INC. and)	
BOSTON EDISON COMPANY d/b/a NSTAR)	
ELECTRIC)	
)	
Defendants)	
)	

DEFENDANT BOSTON EDISON COMPANY'S
MOTION FOR SUMMARY JUDGMENT

Pursuant to Fed. Rule Civ. P. 56 and Local Rule 56.1, Defendant, Boston Edison Company d/b/a NSTAR Electric ("Boston Edison"), hereby moves for summary judgment in its favor as to all claims brought against it by Plaintiffs, Ian J. Brown, James Brown, and Barbara Brown.

This action arises out of a motorcycle accident that occurred on January 4, 2002. The driver of the motorcycle, Ian Brown, lost control of his motorcycle as he rode along Hartwell Road, Bedford, Massachusetts and then struck a guardrail and then a utility pole. The utility pole was jointly owned by Boston Edison and Verizon New England, Inc. Ian Brown alleges that he suffered serious personal injuries as a result of the accident. Plaintiffs have asserted claims of negligence and loss of consortium based upon the alleged wrongful placement of the utility pole.

In this case, summary judgment is appropriate on all claims against Boston Edison because 1) Boston Edison cannot be liable in negligence when a motorcyclist unforeseeably leaves the roadway and collides with its utility pole located off the traveled portion of roadway; 2) the statute of repose bars Plaintiffs' claims; and 3) Plaintiffs cannot prevail on their loss of consortium claim when Ian Brown was not financially dependent on his parents prior to the accident and is not financially dependent on his parents since the accident.

In support of its Motion for Summary Judgment, Boston Edison submits herewith the following documents, incorporated by reference into this motion:

1. Concise Statement of Material Facts Pursuant To Local Rule 56.1 in Support of Boston Edison Company's Motion for Summary Judgment and the following attached exhibits; and
 - A. Plaintiffs' Complaint
 - B. Affidavit of Daniel Roche
 - C. Defendant Boston Edison Company's Answers to Plaintiffs' Interrogatories
 - D. Deposition Transcript of Ian Brown
 - E. Deposition Transcript of Murray Burnstine
 - F. Deposition Transcript of Peter Dion
 - G. Boston Edison's Responses to Plaintiff's Request for Admissions
 - H. Deposition Transcript of James Brown
 - I. Deposition Transcript of Barbara Brown
 - J. Certified Copy of Town of Bedford's Records
2. Memorandum of Law in Support of Summary Judgment on Plaintiffs' Claims

WHEREFORE, pursuant to Fed. Rule Civ. P. 56, Boston Edison Company requests that Summary Judgment enter dismissing with prejudice all claims against Boston Edison Company d/b/a NSTAR Electric.

Request for Hearing

Pursuant to Local Rule 7.1(D), Boston Edison Company requests oral argument on the within Motion for Summary Judgment.

Respectfully submitted,

BOSTON EDISON COMPANY,
By its attorney,

/s/ Marissa A. Goldberg

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CERTIFICATE PURSUANT TO RULE 7.1

I, Michael K. Callahan, herby certify on March 14, 2007, I conferred via e-mail communication with all counsel of record in a good faith attempt to resolve or narrow the issues raised by the instant motion.

/s/ Michael K. Callahan

Michael K. Callahan (BBO #546660)

CERTIFICATE OF SERVICE

I hereby certify the foregoing Motion together with all accompanying documents filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on March 14, 2007.

/s/ Marissa A. Goldberg